

Risk Factors for Workplace Sexual Harassment and What to Do About Them

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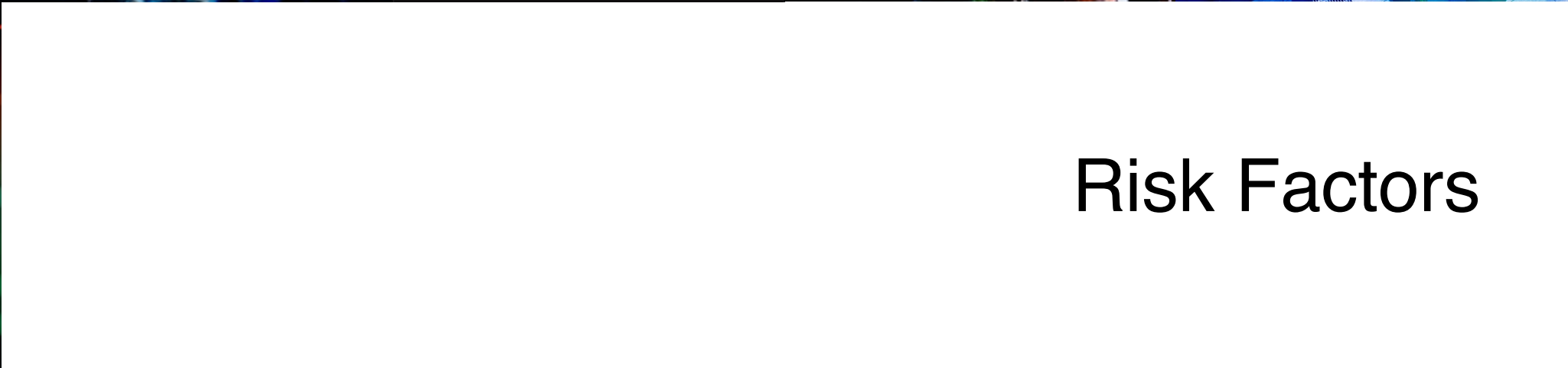
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Equal Employment Opportunity Commission (EEOC) Data

On October 4, 2018, the EEOC released preliminary data on sexual harassment claims for fiscal year 2018:

- 66 harassment lawsuits were filed, 41 involving sexual harassment allegations. This marks a 50% increase from the previous year.
- Charges filed with the EEOC alleging sexual harassment increased by over 12% from 2017.
- The EEOC recovered almost \$70 million for victims of sexual harassment through enforcement and litigation in fiscal year 2018 (up from \$47.5 million in the previous year).

“EEOC Preliminary FY 2018 Sexual Harassment Data,” October 4, 2018. Equal Employment Opportunity Commission.
<https://www.eeoc.gov/eeoc/newsroom/release/10-4-18.cfm>



Risk Factors



Risk Factor #1

Homogenous workplaces or workplaces where some workers do not conform to workplace norms

- Workplaces lacking in diversity have a higher risk of harassment.
- Employees who are different from the workforce “norm” based on social stereotypes may feel isolated.
- Workers in the majority might feel threatened by employees they perceive as “different” because they fear a change in company culture or are concerned for their jobs.

Recommended Steps:

- Promote diversity efforts and focus on improving diversity in the workplace.
- Management should lead by example and ensure company values include civility and respect.
- Monitor how employees interact with one another.

“Select Task Force on the Study of Harassment in the Workplace Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic” June 2016 https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm

Risk Factor #2

Cultural and language differences in the workplace

- Workers who do not speak English or the dominate language of their workplace may not know their rights under the harassment prevention and anti-discrimination policies.
- Employees may not be aware of cultural differences and social and/or workplace norms.

Recommended Steps:

- Ensure employees understand the definition of sexual harassment in the workplace.
- Ensure employees understand any applicable policies on the topic of harassment prevention and anti-discrimination.
- Incorporate trainings on harassment prevention and anti discrimination into the employee onboarding process.
- Invest in having policies and trainings translated into the languages reflective of the employees in the workplace.
- It is particularly critical to train managers in this area so they lead by example.

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Risk Factor #3

Power disparities and “high-value” employees

- Though power disparities between groups of employees are often an unavoidable organizational reality, employers should be aware of how such dynamics in the workplace can increase the risk of harassment.
- Employees in a position of authority may feel empowered to exploit subordinate employees, and lower-level workers may be hesitant to report for fear of retaliation.
- If an employee brings real or perceived “high value” to the company, management may be reluctant to jeopardize that value.

Recommended Steps:

- Ensure policies are applied uniformly regardless of an employee’s position in the company.
- Ensure employees have multiple available avenues for reporting and that all are aware of available reporting avenues.

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Risk Factor #4

Isolated or decentralized workplaces

- Physically isolated workplaces or environments where offices are far removed from management may increase the risk of harassment.
- Employees who work remotely from their home may have an increased risk of harassment as well.
- With no local department supervisor to hold potential harassers accountable for policy-breaking behavior, an employer's risk may increase.

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Risk Factor #4

Isolated or decentralized workplaces

Recommended Steps:

- Ensure anti-harassment training is delivered to all employees.
- Incorporate web based training for remote employees.
- Create an open door culture and establish an ethics hotline for employees to report concerns.
- Check in with employees on a consistent basis to ensure they feel safe and connected to the organization and are being treated respectfully.
- Define and communicate reporting procedures to all employees, regardless of how geographically dispersed the workplace is.

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Risk Factor #5

Workplaces where work is monotonous or where there are low-intensity tasks

- If employees are not engaged in their work, harassing behavior may become a way to vent frustration or combat boredom.
- To combat boredom, some employees may tell jokes. These jokes can quickly cross the line and become mockery, insults or put-downs of their co-workers.
- If employees feel they are in a dead-end job with no opportunity for advancement or to try new things they lose their motivation to succeed. They can lose respect for the company and themselves.
- **Recommended Steps:**
 - Incorporate a cross-training program where employees can learn a new function or role.
 - Incorporate an internal job posting system where employees are able to apply for new positions before they are posted externally.
 - Ask for volunteers for a mentorship program to train new employees.
 - Have a weekly or monthly fun event where employees can recognize one another. This can energize the work environment and give the employees something to look forward to.

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Risk Factor #6

Workplaces that rely on customer service or client satisfaction

- For employees whose compensation is directly tied to customer satisfaction or client service, the fear of losing a sale or other compensation may force them to tolerate harassing behaviors.

Recommended Steps:

- Stress the importance of a workplace free from harassing and other inappropriate behavior. Encourage employees to be wary of unwelcome conduct, and frequently remind employees that they are never expected to tolerate such behavior.

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Risk Factor # 7

Alcohol Consumption

- Alcohol **consumption can** reduce social inhibitions and impair judgment.
- Employees may be more likely to act outside the bounds of acceptable workplace behavior when alcohol is present.
- Alcohol consumed either on company premises or at offsite events can increase workplace risk.



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Risk Factor # 7

Alcohol Consumption

Recommended Steps:

- Have controls in place that limit alcohol consumption.
 - Drink tickets
 - Sober individual serving drinks (bartender or member of management)
- Have a company policy that covers alcohol consumption and require employees to accept it.
- Train supervisors on how to respond when employees have consumed too much alcohol.
- Ensure there are protocols in place to help ensure that employees never drink and drive.
- Have plenty of non-alcoholic drink options as well as food.

Risk Factor # 7

Alcohol Consumption

Holiday Parties

- 1) Limit alcohol
- 2) Charge leaders with being examples
- 3) Take steps to ensure employees arrive home safe without incident
- 4) Be cognizant of location and time of event
- 5) Communicate expectations ahead of time



There are alternatives to a holiday
party!

Risk Factor #8 Employee Interactions Outside the Workplace

Certain scenarios outside of the workplace can lead to situations where sexual harassment could likely result. Some examples of this are:

- Corporate retreats
- Company travel
- Happy hours and company events
- Employee friendships and romantic relationships



Employees may feel more comfortable in these scenarios and think that company policies may not necessarily apply.

Risk Factor #8

Employee Interactions Outside the Workplace

Recommended Steps:

- The company's leaders should always be aware that an off-premises event is occurring and that they have a role in preventing situations that lead to harassment.
- Leaders should lead by example at offsite events.
- Company leadership should be present the entire time at company parties and events, especially when alcohol is served.
- Before the event, remind employees of applicable policies (alcohol consumption policy, appropriate behaviors policy, sexual harassment prevention policy).

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Risk Factor #9

Employee Dating

- Employees who date co-workers may create a high risk situation for the employer.
- Some companies have created or updated their policies on inter-company dating and sexual harassment preventions due to recent events in the media.
- The first step is often determining whether the organization has a policy on inter-company dating and whether having one fits the organization's culture.
- Ultimately, it is the employer's decision whether to completely prohibit or just discourage fraternization between employees and especially between managers and their subordinates.
- Another option is to require the self-reporting of such relationships, including those with vendors and other third-party business associates.

Recommended Steps:

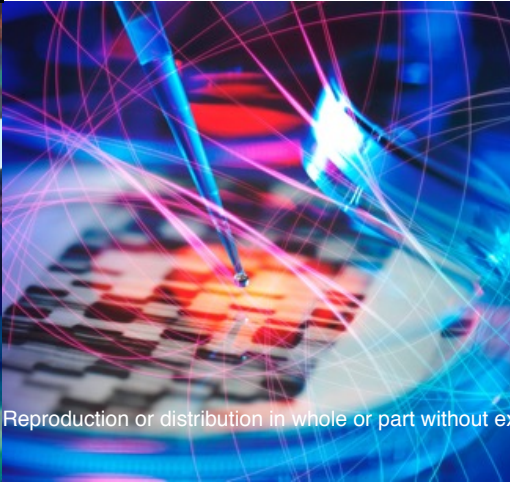
- Communicate your company dating policy upon hire and on a regular basis.
- Ensure all new employees are trained on workplace conduct, given the anti-harassment policy, and taught to use the complaint process.
- Company decision makers may want to explore having staffers who are dating sign a relationship contract stating they're in a consensual relationship and that they've read and will abide by the company's written policy on sexual harassment.
- Seek outside legal counsel to determine if relationship contracts are the right course of action for your business.

Best Practices

- Have a harassment prevention policy that prohibits all types of harassment, including sexual harassment, and that instructs employees on how to report harassment, contains a thorough and prompt investigation procedure, and will take appropriate action and inform the parties of the findings and results.
- Compliant training is available on the TriNet platform for all employees at no additional cost.
- Train your employees on what to do if they experience or witness harassment in the workplace.
- Ensure there is an open door environment for employees to report issues.
- Obtain executive buy-in regarding the importance of training, policies that prevent harassment and the promotion of a culture that is inclusive.



State Requirements



Amendments to the Fair Housing and Employment Act

Effective January 1, 2019:

- Employers with five or more employees need to provide:
 - Two hours of training to all supervisory employees
 - One hour of training to all non-supervisory employees in California within six months after they start a position
 - All training must be provided by January 1, 2020
 - Previously, only supervisors who worked at companies with 50 or more employees were required to complete sexual harassment prevention training

Sexual Harassment Law

- Effective January 1, 2019.
- Employers with four or more employees are required to provide an information sheet provided by the state to all current and new employees. Existing employees must be provided the information sheet by July 1, 2019.
- Covered employers must provide all employees with interactive training and education on the prevention of sexual harassment and prohibition of retaliation.
 - New supervisors must receive additional interactive training within one year of the commencement of their employment in a supervisory role. Existing supervisors must receive training by January 1, 2020.

New York State

- All employers with employees in New York state must:
 - Have and distribute a sexual harassment prevention policy on or before **October 9, 2018**.
 - Implement a training program that meets the requirements set forth by the state on or before **October 9, 2019**.
 - Post Anti-Sexual Harassment Rights and Responsibilities poster provided by the state in a workplace common area on or before **October 9, 2018**.
- Employers are prohibited from entering into settlement agreements with employees that prevent the disclosure of facts and circumstances surrounding sexual harassment claims unless requested by the employee or complainant.
- State law extends protections from sexual harassment to non-employees who are present in the workplace.

New York City

- All employers with 15 or more employees working in New York City must:
 - Post a notice, in form of a city provided poster, in a workplace common area in both English and Spanish.
 - Provide all new hires a factsheet that discusses anti-sexual harassment rights and responsibilities on or before **September 6, 2018**.
 - Implement an **anti-sexual harassment training program for all employees by April 2020**.
- Both New York State and New York City have model trainings and policies available to employers.
- TriNet provides compliant harassment prevention training as part of your service fee that meets all current state and local requirements. Please contact your TriNet representative for further details.

Other states

Here are some of the states that have either training or policy requirements concerning sexual harassment prevention:

- Connecticut
- Hawaii
- Maine
- Massachusetts
- Rhode Island
- Vermont

There are a number of states that also encourage having a sexual harassment prevention policy and/or sexual harassment prevention training.

QUESTIONS?

THANK YOU

Thank you for participating in TriNet's Executive Roadmap Webinar.



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